THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24560 OF 2005

DATED:17.11.2005

Between:

M.Jayakrishna

…Petitioner

And

Mandal Revenue Officer, Nampally Mandal,

Office of the District Collector, Hyderabad District

Hyderabad and another

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24560 OF 2005

ORDER:

The present Writ Petition is filed challenging the notice issued under Section 7 of the Land Encroachment Act, 1905 (for short, the Act) whereby and whereunder the Mandal Revenue Officer called upon the petitioner to show cause as to why he should not be evicted from the land admeasuring Ac.6.17 gts. in S.Nos.17, 18 and 19 correlated to T.S.Nos.9, 8 and 7), Ward No.202, Block-C, Thotaguda Village, Nampally Mandal, Hyderabad (hereafter called, the petition property). The petitioner seeks a Writ of Mandamus to set aside the impugned notice and for a consequential direction not to evict the petitioner from the petition property.

The petitioner alleges that his grand-mother was pattadar of the land. There was an attempt in 1991 and 1996 by the Government to interfere with the possession and also to declare the property as bona vacantia land. On both the occasions the petitioner filed W.P.No.1409 of 1991, and W.P.No.22007 of 1996 claiming the land to be personal property. The Writ Petitions were disposed of by this Court on 31.8.2005 noticing the petitioner's possession, and giving liberty to the Government and/or the petitioner to seek appropriate relief for declaration of title. Thereafter, when there was alleged attempt by the Mandal Revenue Officer, the petitioner filed W.P.No.22952 of 2005. In view of the counter averments made by the Mandal Revenue Officer in the said Writ Petition, that necessary action is being taken in accordance with the provisions of the Act, the Writ Petition was disposed of giving liberty to the petitioner to file appropriate explanation to the notice under Section 7 of the Act which contemplated at that time and the Mandal Revenue Officer was directed to pass appropriate orders after considering the explanation by the petitioner. This Court also ordered status quo as to possession in respect of the petition property. Thereafter, the impugned notice came to be issued on 29.10.2005. Without submitting any explanation, the petitioner rushed to this Court by filing present Writ Petition.

Learned counsel for the petitioner made elaborate submissions to sustain the Writ Petition. According to the learned counsel, when once a person is in possession of the land for a longtime, there is a presumption of title and therefore resort to provisions of the Act is illegal. Therefore, according to the learned counsel, even if the impugned communication is a notice under Section 7 of the Act issued by the Mandal Revenue Officer, Writ Petition would lie. According to the learned counsel, resort to provisions of the Act is itself illegal and unauthorized.

Learned Assistant Government Pleader for Revenue opposing the Writ Petition brought to the notice of this Court the decisions of this Court in **Raidurg Cooperative House Building Society Ltd. v. Government of Andhra Pradesh,** and **R.Jayasimha Reddy v. Government of Andhra Pradesh** and submits that the option is left to the Government either to proceed with the Land Encroachment Act or the A.P.Land Grabbing (Prevention) Act, 1982 or to file a suit and the petitioner who encroached upon the Government land cannot dictate the remedy to be adopted by the Government.

The Writ Petition is not maintainable for two reasons. First, admittedly the impugned communication is a notice and the petitioner has various remedies under the Act. Even if the first respondent proceeds against him under the Act, ordinarily Writ Petition against notice would not be maintainable. Secondly, as held by this Court in the decisions referred to hereinabove, it is not an inflexible and inviolable rule that the Government should always file a suit for declaration of title and recovery of possession and mere longstanding possession does not render the action under the provisions of the Act illegal. It is for the Government to take appropriate action. At the stage of notice, this Court cannot issue a Writ prohibiting revenue officials from taking action in accordance with law. If so advised, the petitioner may file explanation to the impugned notice within a period of one week from the date of receipt of a copy of this order.

The Writ Petition, for the above reasons, is accordingly disposed of.

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17.11.2005 (V.V.S.RAO, J

Note: Issue CC by 23.11.2005.

(B.O)

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